

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3471 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALKAPURI AUTOMOBILES

Versus

CENTRAL BANK OF INDIA

Appearance:

MR MJ THAKORE for Petitioner

MR JT TRIVEDI, MR HJ TRIVEDI AND MR BJ TRIVEDI
for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/02/98

ORAL JUDGEMENT

The petitioner before this court is a partnership firm which is running a petrol pump of the Bharat Petroleum Corporation on R.C.Dutt Road at Vadodara. It appears that by very nature of its business, the petitioner receives large sums of money in cash every day. Such sums are deposited in the Bank and payments of Bharat Petroleum Corporation is made by Demand Draft

drawn by the Bank. The petitioner had a current account with over draft facility with the respondent-bank (hereinafter referred to as "the Bank") which is situated opposite to the petrol pump run by the petitioner firm. It is the claim of the petitioner that the petitioner had the said current account with the Bank since the year 1983-84; it deposited all its cash receipts every day in the said account and made payments to the Bharat Petroleum Corporation through the Bank. Some time in the year 1991, the Bank felt that a sizeable time was required to count the cash deposited by the petitioner firm and it was not possible for the Bank to spare service of a Cashier for such counting. The Bank, therefore, on 19th October, 1991 (Annexure 'A' to the petition) sent a communication to the petitioner firm informing it that on account of the acute staff constraints, the Bank would not be in a position to accept more than 20 packets of currency notes of any denomination. This appears to be the Threshold of the rift between the petitioner firm and the Bank. Feeling aggrieved, petitioner instituted a Regular Civil Suit No.530 of 1992 before the learned Civil Judge (S.D.), Vadodara. Pending the said suit, on 12th January, 1993, the Bank informed the petitioner firm about its intention to withdraw the overdraft facility and to close the account as it had become unremunerative. Feeling aggrieved, the petitioner firm instituted another Suit being Reg.Civil Suit No.89 of 1993 before the learned Civil Judge (S.D.), Vadodara. The application Exh.5 made in Regular Civil Suit No.89 of 1993 under Order 39 Rule 1 of C.P.C. was decided by the learned trial Judge on 19th March, 1993. The learned trial Judge observed that the impugned notice dated 12th January, 1993 was prima-facie illegal and contrary to the directions issued in respect of the closure of the account. In view of the above referred order, on 20th March, 1993, Bank gave a notice to the petitioner firm and disclosed its intention to close the petitioner's account at the expiry of 30 days' period from the date of the notice i.e. by 29th April, 1993. Feeling aggrieved, the petitioner has preferred this petition. I am informed that pursuant to the impugned notice the account of the petitioner firm with the Bank has been closed.

2. Learned advocate Mr. Thakore has appeared for the petitioner firm and has submitted that though the Bank is a commercial organization, it is the "other authority" within the meaning of Article 12 of the Constitution of India. Further, it is rendering public utility service. He has submitted that the Bank is,

therefore, duty bound to act in a just and fair manner. The Bank could not have closed the account of the petitioner firm arbitrarily as has been done in the instant case. He has submitted that by the very nature of its business, the petitioner's firm is bound to receive large sums in cash and it has to deposit it in some Bank. The Bank is required to render Banking services in the area in which it is situated. The petitioner firm has an overdraft account with the Bank since 1983 and the Bank had been receiving the cash deposited by the petitioner firm every day. It has now expressed its inability to receive large sums in cash only because with the commercial development of the area, the business of the Bank has increased and it has many more substantial clients. The action of the Bank is, therefore, arbitrary and requires to be quashed and set aside. In support of his contention, he has relied upon the judgment of the Supreme Court in the matters of M/s. Hyderabad Commercials V/s. Indian Bank and Others, (A.I.R. 1991 Supreme Court, 247); Kumari Shrilekha Vidyarthi V/s. State of Uttar Pradesh & Others, (A.I.R. 1991 Supreme Court p.537). Canara Bank and Others V/s. R. Jambunathan and Others, [(1994) 5 Supreme Court Cases, 573.]

3. The petition has been contested by the Bank. Learned advocate Mr. Trivedi has appeared for the Bank and has submitted that the account of the petitioner firm with the Bank had become unremunerative. He has relied upon the auditor's report reproduced in the counter affidavit made by the Branch Manager of the Bank. He has submitted that the petitioner firm used to deposit large sums of money in cash every day and was withdrawing the same daily. The said amount was transferred to another account of the petitioner firm with the Pragati Sahakari Bank Limited. That the petitioner has substantial business with the Pragati Sahakari Bank Limited while the Bank had to receive large amount in cash and had to devote a sizeable time for counting the said cash, had to incur substantial expenditure in transferring the said cash to the another branch of the Bank. Thus, in comparison to the expenditure incurred in maintaining the account of the petitioner, the Bank did not earn any gain which rendered the petitioner's account unremunerative. Further, no payment to the Bharat Petroleum Corporation was being made by the petitioner firm through the Bank. He has relied upon the daily accounts of the petitioner firm (Annexure 'Q' to the Counter affidavit). Mr. Trivedi has fairly conceded that the Bank is "other

authority" under Article 12 of the Constitution and does render public utility service. However, he has submitted that nonetheless the Bank is a commercial organisation and it cannot be compelled to continue the business which is unremunerative. He has submitted that to maintain an account with the Bank is a matter of contract and under the terms of the contract, the Bank has right to close any account after giving previous notice thereof. The term referred to by Mr. Trivedi has been reproduced at Page 3 of the counter affidavit. In support of his contention he has relied upon the judgment of Madras High Court in the matter of Champion Automobiles Limited V/s. Travancore National Limited, (A.I.R. 1938 Madras 77).

4. In the matter of M/s. Hyderabad Commercial (Supra), the Supreme Court held that, "the Bank is an instrumentality of the state and it must function honestly to serve its customers." In the matter of Shrilekha Vidyarthi (supra) in Paragraph 22 of the judgment, the court has held that, "private parties are concerned only with their personal interest whereas the State while exercising its powers and discharging its functions acts indubitably, as is expected of it, for public good and public interest. The impact of every state action is also on public interest. This factor alone is sufficient to import atleast the minimal requirements of public law obligations and impress with this character the contracts made by the state or its instrumentality." In the matter of Canara Bank (supra), the court has held that, "the Bank renders public utility service." In the matter of Champion Automobiles Limited (supra), the court quoted the order of the trial court with approval which held that, "the rule giving the bank the right to close an account without reference to the depositors; so long as it is not in violation of the statutory obligation, I do not see why parties should not contract themselves in the manner they have chosen to do. The rule is in the nature of the contract entered between the parties, it cannot be said that there is a statutory prohibition. Neither it can be said that it is immoral or it is opposed to public policy."

5. It is undoubtedly true that Bank is "other authority" within the meaning of Article 12 of the Constitution of India and it does render public utility service. Nonetheless the Bank is also a commercial organisation. It must, therefore, be held that the Bank has to run its business in a just and fair manner keeping

in view the public good. However, at the same time, no bank is expected to undertake the business which may not be profitable. The question, therefore, is whether in the instant case the Bank has acted in an arbitrary or unfair manner in ordering closure of the petitioner's account. Mr. Thakore does not appear to be right in contending that the Bank has ordered closure of petitioner's account because its business has grown over past some years and has more substantial clientele. On perusal of the accounts of the petitioner firm, it does appear that large sums of money is deposited by the petitioner firm in the Bank every day in cash and the same is withdrawn immediately leaving a comparatively negligible balance. It is not disputed that all the money deposited in the Bank daily is transferred to the account of the petitioner with the Pragati Sahakari Bank Limited. As it is pointed out in the counter affidavit, the Bank has to spare service of one cashier for counting the cash deposited by the petitioner firm and Bank has to incur considerable expenditure for transferring the said cash. However, Bank does not earn any interest on the said amount since the said amount is immediately withdrawn from the Bank. I am, therefore, of the view that Mr. Trivedi is right in contending that the petitioner's account with the Bank has become unremunerative. In the circumstances, the Bank had the right to order closure of the account in accordance with the terms of the contract. If a bank orders closure of an account which is unremunerative, such an act cannot be said to be either arbitrary or unjust or unfair. In my view the impugned action of the Bank is neither malafide nor arbitrary. It is not disputed that the petitioner firm has been given adequate notice of closure of its account. In the circumstances, the action of the Bank in closing the account of the petitioner cannot be interfered with.

Petition is therefore dismissed. Rule is discharged.

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